

## **JCOTS 2005 Proposed Legislation**

### ***As Acted On At 12/01/04 Meeting***

#### **Adopted and Recommended**

- ***Virginia Public Procurement Act (VPPA)***

1. Amend public bodies' authorization to purchase from online public auctions (§ 2.2 -4303 (I)) and through cooperative procurement arrangements (§ 2.2-4304 (A) and (B)) to require CIO approval for IT goods and services.

The basic principle is that while the legislature may have provided public bodies (which includes localities) several procurement tools, state agencies should be required to obtain approval from VITA, the central IT procurement agency, before using these tools. This principle was successfully implemented in the 2004 Session for purchases made off of the U.S. Department of General Services' schedules in House Bill 470 (Nixon) and Senate Bill 95 (Devolites). Both bills provided that upon approval of the Chief Information Officer, any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a contract for such goods and services which is maintained by the U.S. General Services Administration.

2. Authorize VITA to Conduct an Alternative Dispute Resolution (ADR) Pilot Project.

VITA is committed to using ADR as a valid and recognized mechanism to resolve protests and procurement disputes. § 2.2-4365 (A) of the VPPA sets out the administrative appeals procedure. Admittedly, some ambiguity may exist in that section about the use of ADR in the way VITA envisions. Despite the ambiguity, however, VITA has successfully used ADR (mediation specifically) to resolve one procurement protest and another one is underway--both at the request of unsuccessful vendors.

The legislative idea is to draft an uncoded "Section One" bill which clearly authorizes VITA to conduct a pilot project wherein, notwithstanding the VPPA, the agency could promulgate administrative rules which require vendors to exhaust ADR remedies before filing a protest in court. VITA would collect data on the pilot project to help determine if a more permanent change to the VPPA should be made based on VITA's experience and that of the vendor community. VITA recommends that the pilot project be authorized for at least three years and that the agency work very closely with the JCOTS I-Gov Advisory Committee and the Governor's ADR Council to vet this proposal and craft acceptable language.

- ***Freedom of Information Act (FOIA)***

1. Enact a closed meeting exception for the Public-Private Education Facilities and Infrastructure Act (PPEA) which parallels that provided for the Public-Private Transportation Act (PPTA).

FOIA contains an exemption from mandatory disclosure of certain proprietary PPEA and PPTA records (§ 2.2-3705.6 (11)). FOIA also contains an exemption permitting public bodies to go into closed executive session to discuss those PPTA records (§ 2.2-3711(A)(29)). No similar exemption permitting a closed executive session exists to discuss PPEA records for any public body.

2. Let the current electronic meetings pilot project expire on July 1, 2005, and permanently codify an amended version of the pilot project into FOIA for all statewide public bodies (not localities).

The Information Technology Investment Board adopted revised bylaws on August 11, 2004, to permit and encourage its participation in this pilot project. The pilot project was created in 1999 via Chapter 704 of the 1999 Acts of Assembly on recommendation of the Joint Commission on Technology and Science.

JCOTS and the FOIA Advisory Council have jointly recommended identical legislation for 2005 with two important policy distinctions from the current pilot project: 1) a quorum of the public body must be physically present in one location and 2) public bodies must hold at least one face to face meeting annually wherein no electronic participation is permitted.

**No Recommendation \***

- ***Virginia Public Procurement Act (VPPA)***

Eliminate a preference in the VPPA for any particular procurement method (possibly by striking § 2.2-4303 (C)).

§ 2.2-4303 provides that the public body shall document that competitive sealed bidding is either not practicable or not fiscally advantageous to the public before using competitive negotiation. The purpose of this language is to show a preference for the use of competitive sealed bidding as a procurement method. VITA and DGS both support legislation that leaves the choice of method to procurement professionals.

\* Individual JCOTS members are willing to work on this issue and consider legislation for introduction in the 2005 Session.